Supreme Court of the United States

OCTOBER TERM, 1938.

No. 177.

J. W. KOHN, M. S. KOHN, and J. W. KOHN, Administrator of the Estate of CARRIE KOHN, Deceased, - - - - - Appellants,

versus

CENTRAL DISTRIBUTING COMPANY, INC., A Corporation, and COMMONWEALTH OF KENTUCKY, by and on Relation of JAMES W. MARTIN, Commissioner of Revenue, - Appellees.

BRIEF FOR APPELLEE COMMONWEALTH OF KENTUCKY.

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INDEX TO POINTS AND AUTHORITIES.

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No. 177.

J. W. KOHN, M. S. KOHN, AND J. W. KOHN, ADMINISTRATOR OF THE ESTATE OF CARRIE KOHN, DECEASED, - *Appellants,*

v.

CENTRAL DISTRIBUTING COMPANY, INC., A CORPORATION, AND COMMONWEALTH OF KENTUCKY, BY AND ON RELATION OF JAMES W. MARTIN, COMMISSIONER OF REVENUE, - - - - - - - *Appellees.*

BRIEF FOR APPELLEE COMMONWEALTH OF KENTUCKY.

This is an appeal from a decree of a District Court of three Judges for the Eastern District of Kentucky, whereby the District Court refused to enjoin the Commonwealth of Kentucky, acting through its duly appointed Commissioner of Revenue, from proceeding with the prosecution of a suit previously instituted in the Franklin Circuit Court, the fiscal court of the Commonwealth, to collect excise taxes alleged to be due the Commonwealth.

The District Court declined to issue the injunctio because it was apparent that the petitioners had a co plete and adequate remedy at law without resorting the extraordinary remedy of injunction.

The facts out of which this litigation grew may simply stated and a brief statement of the materi facts will assist the court in the determination of t only issue presented.

STATEMENT OF FACT.

Central Distributing Company, Incorporated, Kentucky corporation, was a wholesale liquor licens of the Commonwealth of Kentucky located in Newpo Campbell County, Kentucky. An audit of the affai of that company for tax purposes was made by t Department of Revenue of Kentucky and a tax li bility was discovered in the amount of Three Thousan One Hundred Ninety-one Dollars and eighty-ni cents ($3,191.89), plus interest and penalties. This t liability grew out of the failure of the Central D tributing Company to purchase from the Commo wealth and affix to whiskey sold by them in Kentuc the Kentucky Consumer's Tax stamps, as required Section 4281c-1 to 4281c-25, both inclusive, Carrol Kentucky Statutes, Baldwin's 1936 Revision. Prompt following the determination that there was a tax li bility the Commonwealth acting by and through duly authorized Commissioner of Revenue institut a civil suit in the Franklin Circuit Court, a court competent jurisdiction, against the Central Distrib

ting Company, in which that Court was asked to issue an order of attachment against any and all property owned by Central Distributing Company to the extent of the plaintiff's claim and costs, and the prayer of that petition further asked that upon final hearing the attachment be sustained, and that judgment for the amount claimed be awarded the Commonwealth.

Upon the filing of that petition the order of attachment was issued as provided by statute, directed to the Sheriff of Campbell County, Kentucky. That officer executed the order of attachment by levying upon a quantity of whiskey of the approximate value of Three Thousand ($3,000) Dollars, which he found on the premises of the Central Distributing Company.

Then followed a barrage of restraining orders, injunctions and writs of prohibition. In the absence of the Judge of the Franklin Circuit Court, Central Distributing Company applied for and obtained a temporary restraining order from the Clerk of that Court. Upon a hearing of the case before the Judge of the Franklin Circuit Court this temporary restraining order was dissolved and an appeal taken to the Court of Appeals of Kentucky. The Circuit Court was affirmed and the application for injunction denied by a Judge of the Court of Appeals on March 28, 1938. A copy of the opinion of that Court is attached as an appendage hereto marked Appellees' Exhibit "A" for identification.

Central Distributing Company also sought, but without success, to enjoin the officers of Campbell County from carrying out the orders of the Franklin

Circuit Court and failing in this these appellants claiming to be mortgagees of Central Distributing Company filed in the United States District Court for the Eastern District of Kentucky their petition also seeking to enjoin the Commonwealth from proceeding toward the collection of this tax. This petition (Pages 3-15, Record) contained a great many allegations attacking among other things the constitutionality of the Consumer's Tax Act; the Import Tax Act; the jurisdiction of the Franklin Circuit Court; it was alleged that these appellants were mortgagees of the Central Distributing Company and that as such, they had a claim prior and superior to that of the Commonwealth on the property of the Central Distributing Company; and many other allegations which, as we conceive it, were completely irrelevant and of no materiality in the injunctive proceeding.

It was the position of the Commonwealth of Kentucky in the District Court and the position of the Commonwealth here that if any of the allegations of appellee's petition for injunctive relief are well taken such matters might properly be presented by way of defense in the action in the Franklin Circuit Court, and that, therefore, appellants had a full, complete and adequate remedy at law.

The three Judge Federal Court adopted the contention of the Commonwealth that the motion for a temporary and permanent injunction should be denied because the contentions asserted by appellants herein, if meritorious, were available as matters of defense in the State Courts and that the appellants, therefore,

had available a complete and adequate remedy at law and were not entitled to the extraordinary remedy of injunction.

The position taken by appellants before the District Court and upon this appeal is not supported by a decision of this Court in so far as we have been able to find, and it is submitted that the conclusions reached by the District Court is supported by an unbroken line of decisions of this and inferior Federal Courts. Since the three Judge District Court concurred with counsel for appellee that this case presented but one question, we shall refrain from an extended discussion of the many questions presented in appellants' typewritten brief and will present for the attention of this Court a line of decisions which are decisive in the determination of the one issue presented. (Appellants' printed brief not yet received.)

ARGUMENT.

The question presented is whether the injunctive powers of the Federal Courts may be invoked by an alleged mortgagee of personal property against the State of Kentucky and its administrative officers, who, in the manner provided by Kentucky Law, have instituted a tax suit in the appropriate fiscal court of the State against an alleged debtor and licensee and have had an order of attachment issued and served upon property upon which a lien is asserted by the mortgagees.

The Kentucky Legislature in enacting the Alcoholic Beverage Tax Acts of 1934 and of 1936 provided in Section 4281c-20, Carroll's Kentucky Statutes, for the institution of civil tax suits and the procuring of orders of attachment to protect the Commonwealth on claims asserted. This the Commonwealth has done in the case filed against the Central Distributing Company. It was not known by the Commonwealth at the time the attachment was issued and levied that the appellants were claiming an interest in the property attached under a recorded mortgage. Promptly upon that fact being brought to the attention of the State, an amended petition was filed in the State Court asking that the mortgagees be made parties to that proceeding and that they assert whatever claim they might have or forever be barred. Their appearance was entered by counsel now representing them in this Court and the matter can without prejudice be disposed of by the State Court.

Should the mortgagees, appellants here, or the Central Distributing Company feel themselves aggrieved by the conclusions reached by the Franklin Circuit Court, they have the most complete and adequate remedy that any litigant may desire, and that is of appeal to the Court of last resort, which in Kentucky is the Court of Appeals.

It is expressly provided by the Kentucky Statutes, Section 950-1, Carroll's Kentucky Statutes, Baldwin's 1936 Revision, that *an appeal may be taken to the Court of Appeals as a matter of right* from the judgment of the Circuit Court in all cases in which the title to land

or the right to an easement therein is directly involved, *and it is further provided that an appeal may be prosecuted as a matter of right* from any judgment for the recovery of money or personal property or the enforcement of a lien *if the value in controversy exceeds $500.00 exclusive of interest and costs.* A copy of this section of the Kentucky Statutes is appended hereto marked "Appellees' Exhibit B" for identification.

Thus it is clear that the appellant mortgagees or the appellee, Central Distributing Company, could have appealed from any final judgment of the Franklin Circuit Court in the event of an adverse determination of the defenses or claims asserted therein.

It may be argued that the mortgagees or the debtor was prejudiced by the execution of the order of attachment and of their being deprived of the possession of the property thus seized. They had and have an adequate remedy to repossess themselves of the property by executing the bond provided by Section 221, Carroll's Civil Code of Practice of Kentucky, that the property will be forthcoming in the event the order of attachment is sustained. Should the lower court have entered an order sustaining the attachment, the owners of the property or the mortgagees could still have retained possession by executing a supersedeas bond pending the appeal before the Court of Appeals of Kentucky. If that court decided the issue adversely to the mortgagees or debtor, they possessed and now possess the adequate remedy of a direct appeal from the Kentucky Court of Appeals to this Honorable Court for a review of constitutional questions.

Thus we see that both the appellants and co-appellees at every stage of the proceeding in the State Court possessed the means whereby they were not called upon and could not be called upon to sacrifice any right or defense that they might have, or to surrender the property involved in this controversy.

We direct the Court's attention to these facts as sustaining the conclusion of the District Court that appellants possessed a complete and adequate remedy at law.

Aside from the general law of Kentucky, which in itself affords adequate relief to these appellants, the District Court found, and properly so, that Section 4214a-23, Carroll's Kentucky Statutes, Baldwin's 1936 Revision, afforded specific relief to these appellants, and that by complying with that Section there would have been no need for an attachment. For the consideration of the Court we append hereto Appellees' Exhibit "C" which is Section 4214a-23, Carroll's Kentucky Statutes, Baldwin's 1936 Revision. A consideration thereof will reveal at once that a method was provided whereby the Central Distributing Company or these appellants could have paid the tax claimed by the Commonwealth either with or without protest and that at any time within two years from the date of such payment they could have sued the Commonwealth through its agent, the Auditor of Public Accounts, in an action at law in a proper court to recover back the taxes paid. In this manner any and every question touching the constitutionality of the tax; the jurisdiction of the Court; priority of the rights

of the parties, or any other question which might properly be raised could have been adjudicated in the usual manner.

We are aware of no decision by this Court which would even remotely tend to support the position of these appellants. It has been held with the greatest uniformity that the illegality or unconstitutionality of a tax is not of itself a ground for injunctive relief in the Courts of the United States. If the aggrieved party has a complete, practicable and efficient remedy at law, injunctive relief will not be granted.

We submit that it would be difficult to find a case in which a more complete and adequate remedy at law exists than in the case at bar. If appellants have a prior and superior lien to that of the Commonwealth to the property attached, then it is provided by Section 29, Carroll's Civil Code of Practice of Kentucky, appended hereto as "Appellees' Exhibit D" that appellants may assert their alleged lien in the action now pending in the Franklin Circuit Court. If the Franklin Circuit Court is without jurisdiction or the tax is unconstitutional, such matters would constitute a defense to the action and could properly be litigated in a proper court. Certainly the existence of a defense to an action does not vest an aggrieved party with the right to apply to a Federal Court for injunctive relief.

So numerous are the cases sustaining the position of the Commonwealth here that we shall limit our citation of authorities to only a few of the cases which could be cited.

It is provided in 28 U. S. C. A., Section 379:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

Construing this statutory provision, in Boise Artesian H. & C. Water Company v. Boise City, 213 U. S. 276, 29 Supreme Court Reporter, 426, the Court aptly expressed the rule enunciated by prior cases and followed without exception since that time:

> "An examination of the decisions of this court shows that a proper reluctance to interfere by prevention with the fiscal operations of the state governments has caused it to refrain from so doing in all cases where the Federal rights of the persons could otherwise be preserved unimpaired. It has been held uniformly that the illegality or unconstitutionality of a state or municipal tax or imposition is not of itself a ground for equitable relief in the courts of the United States. In such a case the aggrieved party is left to his remedy at law, when that remedy is as complete, practicable, and efficient as the remedy in equity. *And the rule applies as well where the right asserted is by way of defense.* Phoenix Mut. L. Ins. Co. v. Bailey, 13 Wall. 616, 623, 20 L. Ed. 501, 503.
>
> "In order to give equity jurisdiction, there must be shown, in addition to the illegality or unconstitutionality of the tax or imposition, other circumstances bringing the case under some recognized head of equity jurisdiction, before the rem-

edy by injunction can be awarded. The leading case on the subject is Dows v. Chicago, 11 Wall. 108, 20 L. Ed. 65. In that case the plaintiff sought to enjoin the collection of a tax levied upon shares of the capital stock of a national bank on the ground that the levy was unconstitutional under the state law, and that the property was not within the jurisdiction of the state. This court declined to pass upon the validity of the tax, saying, through Mr. Justice Field (p. 109):

" 'The illegality of the tax and the threatened sale of the shares for its payment constitute of themselves alone no ground for such interposition. There must be some special circumstances attending a threatened injury of this kind, distinguishing it from a common trespass, and bringing the case under some recognized head of equity jurisdiction before the preventive remedy of injunction can be invoked. It is upon taxation that the several states chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible. * * *

" 'No court of equity will, therefore, allow its injunction to issue to restrain their action, except where it may be necessary to protect the rights of the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law. It must appear that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or, where the property is real estate, throw a cloud upon the title of the complainant, before the aid of a court of equity can be invoked.'

"This case has been frequently followed and its governing principle never doubted."

(Italics in the above quotation ours.)

Citing with approval the Boise City case, *supra*, this Court, adhering to the rule enunciated therein and emphasizing its uniformity, said in an opinion delivered by Mr. Justice Stone in Matthews v. Rodgers, 284 U. S. 521, 52 Sup. Ct. 217:

> "*Whenever the question has been presented, this Court has uniformly held that the mere illegality or unconstitutionality of a state or municipal tax is not in itself a ground for equitable relief in the courts of the United States. If the remedy at law is plain, adequate, and complete, the aggrieved party is left to that remedy in the state courts, from which the cause may be brought to this Court for review if any federal question be involved, Jud. Code, p. 237 (28 U. S. C. A., p. 344), or to his suit at law in the federal courts if the essential elements of federal jurisdiction are present.*" (Italics ours.)

The rule enunciated in the foregoing cases has prevailed since the decision in Dows v. Chicago, 11 Wall. 108. It was reaffirmed in Shelton, Sheriff, *et al.*, v. Platt, 139 U. S. 591, 11 Sup. Ct. 646, and has been uniformly followed.

While it has been held that the remedy at law must be plain, adequate, complete and as efficient to the ends of justice as the remedy in equity to preclude the maintenance of an equitable suit (Boise Artesian H. &

C. Water Company v. Boise City, 213 U. S. 276, 29 Supreme Court Reporter, 426; Matthews v. Rodgers, 284 U. S. 521, 52 Sup. Ct. 217), we do not believe appellants here can cite in support of their contention any decision of this Court to the effect that when such remedies existed as are present in the case at bar that injunctive relief by the Federal Courts was held to be proper.

Likewise, injunctive relief has been granted where the remedy at law was inadequate or uncertain or if available would entail a multiplicity of suits (Dawson v. Kentucky Distilleries and Warehouse Company, 255 U. S. 288. 41 Sup. Ct. 272; Chicago and N. W. Railway Company v. Bouman, 69 Fed. (2d) 171), yet obviously such decisions have no application in a case such as the one at bar. The remedy available to these appellants is completely adequate. It would entail no multiplicity of suits. It is readily available under prevailing statutes of Kentucky.

CONCLUSION.

We do not feel that we should further lengthen this brief. We have planted our case squarely upon the proposition that Federal Courts are reluctant to interfere with or obstruct the legitimate operations of the government of a state. We are firmly convinced that the cases cited fully sustain our position. We do not deem it necessary nor proper to argue the multitude of contentions advanced in brief for appellants for the reason that they are wholly foreign to this litigation.

There is not a single contention advanced by appellants which could not properly be made as a matter of defense in the State Courts and we, therefore submit without further elaboration that the District Court did not err in holding that appellants, having a plain, adequate and complete remedy at law, were not entitled to an injunction, temporary or permanent, by the Federal Courts.

We have been furnished with a typewritten copy of what purports to be brief for appellants but at the time of the preparation of this brief we have not received printed copy of brief for appellants and are, therefore, deprived of the opportunity of knowing specifically what appellants' brief will contain.

Respectfully submitted,

HUBERT MEREDITH,
Attorney General, Commonwealth of Kentucky.

WILLIAM HAYS,
Assistant Attorney General.

CLIFFORD E. SMITH,
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General Counsel, Department of Revenue, Commonwealth of Kentucky.

Attorneys for Appellee, Commonwealth of Kentucky.

APPELLEES' EXHIBIT A.

FRANKLIN CIRCUIT COURT.

CENTRAL DISTRIBUTING COMPANY, - - - *Plaintiff,*

v.

THEODORE HAGEMAN,
DIRECTOR OF ALCOHOLIC CONTROL
DEPARTMENT, ETC., ET AL., - - - *Defendants.*

ORDER OF JUDGE THOMAS OF THE COURT OF APPEAL OVERRULING MOTION FOR TEMPORARY INJUNCTION THAT THE FRANKLIN CIRCUIT COURT DENIED.

The motion of plaintiff to grant the injunction prayed for in its petition against Theodore Hageman and Dr. James W. Martin, officers having the administration of the present Alcohol Control Act in Kentucky, is overruled. The validity of the present Alcohol Control Act was upheld by the Court of Appeals in an opinion delivered on March 25, 1938, in the case of Lueke, et al. v. Mescall, et al., and which has not yet been published. The other objections raised to the hearing to revoke plaintiff's license, and which is sought to be enjoined herein are so unmeritorious for that purpose as to require no discussion.

The motion is made pursuant to the provisions of section 297 of the Civil Code of Practice, but for the reasons stated, it is overruled.

Witness my hand as Judge of the Court of Appeals of Kentucky this March 28, 1938.

(signed) GUS THOMAS,
Judge of the Court of Appeals.

APPELLEES' EXHIBIT B.

Carroll's Kentucky Statutes, Baldwin's 1936 Revision, Section 950-1:

> "An appeal may be taken to the court of appeals as a matter of right from the judgment of the circuit court in all cases in which the title to land or the right to an easement therein, or the right to enforce a statutory lien thereon is directly involved, but no appeal shall be taken to the court of appeals as a matter of right from a judgment for the recovery of money or personal property, or any interest therein, or to enforce any lien thereon, if the value in controversy be less than five hundred dollars, exclusive of interest and costs, nor to reverse a judgment granting a divorce, or punishing contempt; nor from any order or judgment of the county court, except in actions for the division of land and allotment of dower; nor from any order or judgment of the quarterly, police, fiscal or justices' court; nor from a bond having the force of a judgment. In all other civil cases the court of appeals shall have appellate jurisdiction over the final orders and judgments of the circuit courts: provided, however, that the court of appeals may grant an appeal when it is satisfied from an examination of the record that the ends of justice require that the judgment appealed from should be reversed; or when the construction or validity of a statute or the construction of a section of the constitution is necessarily and directly put in issue, and a correct decision of the case cannot be had without passing on the validity of the statute or construing the section of the constitution or statute involved, if the value of the amount or thing in controversy, exclusive of interest and costs, is as much as two hundred dollars."

APPELLEES' EXHIBIT C.

Carroll's Kentucky Statutes, Baldwin's 1936 Revision, Section 4214a-23:

"No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied by this Act. The aggrieved taxpayer shall pay with or without protest the tax as and when required and may at any time within two years from the date of such payment sue the Commonwealth through its agent, the Auditor of Public Accounts, in an action at law in any court, state or federal, otherwise having jurisdiction of the parties and subject matter, for the recovery of the tax paid with legal interest thereon from the date of payment. If it is finally determined that said tax or any part thereof was wrongfully collected, for any reason, it shall be the duty of the Auditor of Public Accounts to issue his warrant on the Treasurer of the Commonwealth of Kentucky for the amount of such tax so adjudged to have been wrongfully collected together with legal interest thereon. The Treasurer shall pay the same at once out of the general expenditure fund of the State in preference to other warrants or claims against the Commonwealth. A separate suit need not be filed for each individual payment made by any taxpayer, but a recovery may be had in one suit for as many payments as may have been made." (1934, c. 149, Sec. 12. Eff. March 17, 1934.)

"APPELLEES' EXHIBIT 'D'."

Carroll's Civil Code of Practice of Kentucky, Section 29, provides:

> "In an action or proceeding for the recovery of real or personal property, or for the subjection thereof to a demand of the plaintiff under an attachment or other lien, any person claiming a right to, or interest in, the property or its proceeds, may, before payment of the proceeds to the plaintiff, file, in the action, his verified petition, stating his claim and controverting that of the plaintiff; whereupon the court may order him to be made a defendant; and upon that being done, his petition shall be treated as his answer. But if he be a non-resident he must give security for costs."

SUPREME COURT OF THE UNITED STATES.

No. 177.—October Term, 1938.

J. S. Kohn, M. S. Kohn and J. W. Kohn, administrators of the estate of Carrie Kohn, deceased, Appellants,

vs.

Central Distributing Co., Inc., and the Commonwealth of Kentucky, etc., et al.

Appeal from the District Court of the United States for the Eastern District of Kentucky.

[April 17, 1939.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The Commonwealth of Kentucky, acting through its Commissioner of Revenue, brought suit in the Franklin Circuit Court of that State to recover the amount of a tax claimed to be due from the Central Distributing Company, a Kentucky corporation. A writ of attachment was issued and levied upon certain whiskey which appellants claimed was subject to their lien under a chattel mortgage executed by the company. The mortgagor was in default and appellants had taken possession of the property.

Contending that the statutes under which the tax was assessed and sought to be enforced (Alcohol Control Act, effective March 17, 1934, Alcohol Beverage Tax Act, effective May 1, 1936, and Alcohol Beverage Control Law, effective March 7, 1938) were invalid under the state constitution and also under the commerce clause, the contract clause, and the due process clause of the Fourteenth Amendment, of the Federal Constitution, appellants brought this suit in the federal court against the Commonwealth, on relation of the Commissioner of Revenue, and the Sheriff, to restrain the proceedings to collect the tax and to prevent the defendants from disposing of the property which had been attached.

Defendants moved to dismiss the petition upon the ground that the plaintiffs had an adequate legal remedy and that the court was without jurisdiction to grant the relief sought.

On hearing of the application for a temporary and permanent injunction, the District Court, composed of three judges, dismissed the petition. The court stated that it was its opinion that Section 12 of the Alcohol Control Act of 1934 "furnishes petitioners an adequate remedy . . . to contest the validity of said Act and to recover any taxes collected from them by the State of Kentucky" thereunder. The case comes here on appeal. Jud. Code, Sec. 266, 28 U. S. C. 380.

Appellants contest the ruling of the District Court, asserting that under Section 12 of the Act of 1934—the text of which is set forth in the margin[1]—the remedy is given only to the *taxpayer* and is not available to appellants, the taxpayer's mortgagees. The Commonwealth urges the contrary, but points to no decision of the state court which is decisive of that point.

Apart from that question, the Commonwealth insists that appellants had a plain and adequate remedy by appearing in the attachment suit in the Franklin Circuit Court where all issues as to the validity of the tax and the propriety of the proceedings for enforcement could be litigated and determined, with the ultimate right of review in this court of any federal question raised and decided. The Commonwealth points to the provision of the Civil Code of Practice of Kentucky, Section 29,[2] under which any per-

[1] Section 12 of the Act of 1934 (Carroll's Kentucky Statutes, Baldwin's 1936 Revision, Section 4214a-23) is as follows:

"No suit shall be maintained in any court to restrain or delay the collection of payment of the tax levied by this Act. The aggrieved taxpayer shall pay with or without protest the tax as and when required and may at any time within two years from the date of such payment sue the Commonwealth, through its agent, the Auditor of Public Accounts, in an action at law in any court, state or federal, otherwise having jurisdiction of the parties and subject matter, for the recovery of the tax paid with legal interest thereon from the date of payment. If it is finally determined that said tax or any part thereof was wrongfully collected, for any reason, it shall be the duty of the Auditor of Public Accounts to issue his warrant on the Treasurer of the Commonwealth of Kentucky for the amount of such tax so adjudged to have been wrongfully collected together with legal interest thereon. The Treasurer shall pay the same at once out of the general expenditure fund of the State in preference to other warrants or claims against the Commonwealth. A separate suit need not be filed for each individual payment made by any taxpayer, but a recovery may be had in one suit for as many payments as may have been made".

[2] The text of Section 29 of the Civil Code of Practice is as follows:

"In an action or proceeding for the recovery of real or personal property, or for the subjection thereof to a demand of the plaintiff under an attachment or other lien, any person claiming a right to, or interest in, the property or its proceeds, may, before payment of the proceeds to the plaintiff, file, in the action, his verified petition stating his claim and controverting that of the plaintiff; whereupon the court may order him to be made a defendant; and upon that being done, his petition shall be treated as his answer. But if he be a non-resident he must give security for costs".

son claiming an interest in property which has been attached may file his petition stating his claim and controverting that of the plaintiff in the attachment whereupon he may be made a defendant, his petition being treated as an answer. See, also, Carroll's Kentucky Statutes, Baldwin's 1936 Revision, Section 950-1.

Appellants assert that the Franklin Circuit Court was without jurisdiction of the attachment suit, but that question, appropriately one for the decision of the state court, could manifestly be presented and determined in that action.

Appellants also state that in the present suit they asked the federal court to exercise its equity powers in their aid in the foreclosure of their mortgage, but it is apparent that this relief is merely incidental and that the main object of the suit is to restrain the proceedings in the Franklin Circuit Court which had been brought to enforce the collection of the tax.

This endeavor, aside from the application of the general principle governing the equity jurisdiction, encounters two positive statutory prohibitions: (1) that of Section 265 of the Judicial Code (28 U. S. C. 379) providing that an injunction shall not be granted to stay proceedings in a state court (*Essanay Film Company* v. *Kane*, 258 U. S. 358, 361; *Monamotor Oil Company* v. *Johnson*, 292 U. S. 86, 97; *Hill* v. *Martin*, 296 U. S. 393, 403); and (2) the provision of the Act of August 21, 1937 (50 Stat. 738) amending the first paragraph of Section 24 of the Judicial Code to the effect that "no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State".

The judgment is affirmed.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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